

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2004-0035

For

Mr. John Fetzer
and
Saracina Vineyards

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Mr. John Fetzer, doing business as Saracina Vineyards (hereinafter Discharger), conducted dredging activities in an intermittent stream that is tributary to the Russian River on the Saracina Vineyards Property, located at 11684 South Highway 101 in Hopland, Mendocino County (hereinafter Site), that were unauthorized and therefore were in violation of the California Water Code (CWC) and the Clean Water Act, Section 401 (CWA Section 401).
2. On January 8, 2004, Regional Water Board staff conducted a site inspection at the Discharger's facility in response to a complaint of unauthorized activities associated with stream clearing, dredging and sediment stockpiling. Regional Water Board staff members, Mr. Andrew Jensen and Mr. Andrew Baker, met with the Discharger during the inspection and discussed the activities in order to determine the threat to waters of the state. Staff observed that an unnamed tributary of the Russian River, which flows through the Saracina Vineyards property, had been dredged and that the dredged material had been stockpiled linearly along the southern bank. The stream appears to have been historically channelized and straightened. The Discharger indicated that Saracina Vineyard crews completed the dredging in November, and that the material was left on the southern bank for later removal because the onset of rainy weather prohibited crews from removing the material.

The unauthorized dredging has resulted in unstable stream banks that are beginning to fall into the stream and discharge sediment (Attachments 1-3). Mr. Jensen and Mr. Baker observed that there were several areas in which the banks were failing and that both banks for the entirety of the project had been stripped of any vegetation and were continuously discharging sediment to the stream during rainfall events and/or high flows. Mr. Jensen and Mr. Baker discussed the situation with the Discharger and discussed potential remediation measures that could be implemented to rectify the situation.

The dredging along the unnamed tributary was not authorized by the Regional Water Board. The unauthorized work impacted water quality and beneficial uses and constitutes a violation of provisions of the California Water Code.

Mr. Jensen and Mr. Baker advised the Discharger to contact the Natural Resource Conservation Service (NRCS) to obtain technical advice concerning stream restoration, and to discuss assistance that NRCS may be able to provide.

3. On January 14, 2004, the Discharger's staff contacted Mr. Jensen and Mr. Baker to invite them to an upcoming meeting with Ms. Carol Mandel of the NRCS on February 5, 2004, to discuss plans to restore the stream through the Saracina Vineyards property.
4. On February 5, 2004, Mr. Jensen and Mr. Baker met at the Site with the Discharger, Patrick Rogers Saracina Property Manager, and Carol Mandel of the NRCS, to discuss the restoration of the stream channel. The group discussed the issues related to the unauthorized dredging and resulting discharges of sediment. The Discharger stated that Roger Warner, private consultant, prepared a restoration plan for the Dominis Winery in Napa and that he would be involved in the design of the restoration plan. Ms. Mandel also stated that she would be available to offer expert advice on the restoration plan, and that the plan appeared to be non-complicated. Mr. Jensen notified the Discharger of the preparation of a Cleanup Order that would be forthcoming.
5. The intermittent stream is tributary to the Russian River, with beneficial uses, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), that include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Groundwater recharge
 - f. Navigation
 - g. Hydropower generation
 - g. Water contact recreation
 - h. Non-contact water recreation
 - i. Commercial and sport fishing
 - j. Warm freshwater habitat
 - k. Cold freshwater habitat
 - l. Rare, threatened, or endangered species
 - m. Wildlife habitat
 - n. Migration of aquatic organisms
 - o. Spawning, reproduction, and/or early development
 - p. Estuarine habitat
 - q. Aquaculture
6. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:

- Prohibition 1 - *“The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
 - Prohibition 2 - *“The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”*
7. The Action Plan states: “where investigations indicate that the beneficial uses of water may be adversely affected by waste discharges, the staff shall require the submission of Reports of Waste Discharge.”
8. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:
- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
9. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:
- Section 13267(a) - *“A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region.”*

- Section 13267(b) - *“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”*
 - Section 13267(c) - *“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”*
 - Section 13304(a) - *“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.”*
10. As described above, the Discharger has dredged an intermittent stream and placed stockpiled sediment linearly along the stream, and has therefore caused a discharge of waste into waters of the state.
11. The quantity and manner in which the dredged sediment was extracted and stockpiled linearly along the stream caused the direct loss of wetland habitat and its associated functions, which is deleterious to wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. Stream habitat and associated riparian habitat generally consists of linear habitat that perform important functions related to water quality including but not limited to: providing habitat for aquatic species and wildlife; water quality enhancement; flood peak attenuation and flood water storage; and potential habitat for rare and endangered species. Removal of this habitat due to the discharge and threatened discharge of sediment is deleterious to aquatic species and wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan as described in finding 6 above. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the dirt fill material is therefore subject to cleanup and abatement under California Water Code Section (CWC) 13304.

12. A restoration workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board's public file on this matter.
13. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.
14. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to CWC Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
15. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304:

The Discharger shall coordinate and perform the following cleanup and abatement actions:

1. Submit an application for an after-the-fact Water Quality Certification and/or Waste Discharge Requirements for Dredge/Fill Projects (Attachment 4), and appropriate processing fees, to the Regional Water Board, for Executive Officer concurrence, on or before **May 31, 2004**.

2. Submit a restoration workplan to the Regional Water Board, for Executive Officer concurrence, on or before **May 31, 2004**, that includes the following:
 - a. A plan for removing the linear stockpile of sediment, which shall include information regarding the location and suitability of a chosen disposal site for the material;
 - b. a detailed restoration plan that addresses the timely restoring of the stream habitat affected by the dredging and stockpiling activities. The plan shall contain a time schedule for restoration activities, success criteria to judge the success or the restoration project, and a monitoring proposal to evaluate whether the success criteria are being met; and
 - c. a plan to provide additional mitigation to account for the temporal loss of stream habitat that has occurred as a result of the unauthorized dredging. Such mitigation can include restoration and/or creation of stream habitat elsewhere in the watershed, restoration of stream habitat in areas where the stream is currently subsurface in culverts, and/or by removing culverts and day-lighting the stream on the Site.
3. Following Executive Officer written concurrence, implement the restoration workplan. All work to remove the stockpiled sediment and restore the affected stream habitat shall be completed before **October 16, 2004**.

If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the deadlines in the workplan implementation schedule submitted pursuant to this Order and concurred with by the Executive Officer, the Dischargers may request, in writing, an extension of the time as specified. The written extension request shall include justification for the delay and shall be received by the Regional Water Board not less than 15 calendar days prior to the deadline sought to be extended. An extension may be granted for good cause, in which case this Order will be accordingly revised.

This CAO in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the facility consistent with California Water Code. This CAO may be revised by the Executive Officer as additional information becomes available.

Ordered by _____
Catherine E. Kuhlman
Executive Officer

April 23, 2004

Attachment 1 – Photo of dredged stream channel and linear stockpile of sediment along the stream at Saracina Vineyards, Hopland, Mendocino County, California, taken January 8, 2004.



Attachment 2 – Photo of dredged stream channel and linear stockpile of sediment, facing upstream, along the stream at Saracina Vineyards, Hopland, Mendocino County, California, taken January 8, 2004.



Attachment 3 – Overview of dredged stream channel and linear stockpile of sediment along the stream at Saracina Vineyards, Hopland, Mendocino County, California, taken January 8, 2004.



Attachment 4 – Application for Report of Waste Discharge for Dredge and Fill Projects.